

March 17, 2021

To: Cotton and Tobacco Program Market News Participants

The Market News Division of the Cotton and Tobacco Program (C&T) is authorized and directed to determine and publish actual commercial differences in the value of spot cotton as reflected by bona fide sales of spot cotton (7 U.S.C. § 15b) and to publish statistics or estimates on cotton that is both tenderable and non-tenderable towards contracts for future delivery (7 U.S.C. §471). To fulfill these mandates, C&T relies on cotton spot-market price data, information on cotton holdings, and related supplemental information provided by industry participants. C&T knows this information is private and closely held, making some market participants reluctant to share. While compulsory, the cooperation of industry participants is encouraged by assurances of confidentiality and non-disclosure of all private or closely held, commercial information provided. This document outlines the various legislative and regulatory mandates in place to keep such information confidential.

Confidentiality Mandates

More than just a propitiation, confidentiality is mandated, and violations are subject to penalties of law. The *Cotton Statistics and Estimates Act*, section 1905 of U.S. Code Title 18, and section 2276 of U.S. Code Title 7 contain specific language addressing the confidentiality and non-disclosure of information.

Cotton Statistics and Estimates Act

Section 472 of the Cotton Statistics and Estimates Act (7 U.S.C. §§ 471-476) requires confidentiality with respect to information on “market supply, demand, location, condition, and market prices for cotton” submitted by market participants. Note that section 473b of Cotton Statistics and Estimates Act specifically includes the collection of market prices for cotton.

18 U.S.C. § 1905

Section 1905 prohibits the unauthorized release of information related to trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. Any employee who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any such information coming to him in the course of his employment or official duties shall be subject to a fine, or to imprisonment for not more than one year, or to both, and shall be removed from office or employment.

7 U.S.C. § 2276 (b)

While the Cotton Statistics and Estimates Act mandates that information be held confidential, 7 U.S.C. § 2276 further specifies that information or statistics submitted are not to be disclosed to the public or any Federal, State, local, or tribal agency outside the Department of Agriculture, unless the information has been converted into a statistical or aggregate form that does not allow the identification of the person/entity that supplied the information. Any employee who shall

publish, cause to be published, or otherwise publicly release information collected shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

Freedom of Information Act

The Freedom of Information Act (FOIA)(5 U.S.C. § 552) does allow for the public to request market price information; however, any commercial or financial information submitted by specific businesses would very likely be withheld under FOIA Exemption 4.

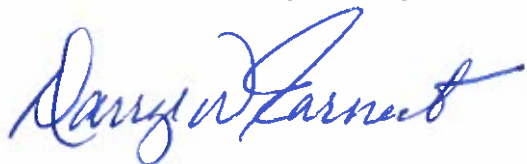
The [Department of Justice](#) defines the conditions under which commercial or financial information provided by a person is "confidential" under Exemption 4.

- The submitter customarily keeps the information private or closely held.
- The government provided an expressed or implied assurance of confidentiality when the information was shared with the government.
- There were no expressed or implied indications that the government would publicly disclose the information.

[Executive Order 12600](#) and USDA FOIA regulations require that the business which provided the government data be informed about any FOIA request and be provided a copy of any responsive records drafted. The business would be afforded the opportunity to respond to the Notice, indicating which requested information within the responsive record set is closely held or confidential.

Attestation

Let this official memorandum serve as a formal testament that the employees of C&T Market News Division will strictly adhere to all confidentiality and data use restrictions and any employee who intentionally makes an unauthorized disclosure shall be subject to legal penalty. Furthermore, let it be known that C&T will employ all legal options to protect private, closely-held, business information shared by industry stakeholders.



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